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10/539,760	02/08/2006	John Hatrick-Smith	550639.00005	5904

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QUARLES & BRADY LLP
411 E. WISCONSIN AVENUE
SUITE 2040
MILWAUKEE, WI 53202-4497

EXAMINER

FETSUGA, ROBERT M

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3751

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,760	Applicant(s) HATRICK-SMITH ET AL.	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,8,12-14 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6,8 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election without traverse of Species I in the reply filed on February 19, 2009 is acknowledged.

Claims 12-14 are objected to as not encompassing the elected invention where applicant states the contrary at page 7 of the response filed February 19, 2009. Claim 12 recites an integral shaped molded outlet fittings and bath wall feature which is disclosed (paragraph bridging pgs. 5 and 6) as being directed to an embodiment other than that of Figs. 1-6. Claim 13 recites an integral outlet fittings and pillow feature which is directed to the embodiment of Fig. 7. It is further noted the subject matter of claims 12 and 13 does not appear reconcilable with the "pivotally mounted" feature added to claim 5 in the response. Accordingly, claims 12-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

2. The drawings are objected to because reference numerals "3" and "5" in Fig. 7 apparently should be --3'-- and --5'-- (or equivalent) to designate different structure from Figs. 1-6, reference numerals "4" and "5" in Fig. 8 apparently should be --4'-- and --5'-- (or equivalent) to designate different structure from Figs. 1-7, reference numeral "5" in Fig. 9 apparently should be --5'-- (or equivalent) to designate different structure from Figs. 1-8, reference numerals "3" and "7" in Fig. 10 apparently should be --3'-- and --7'-- (or

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equivalent) to designate different structure from Figs. 1-9, and reference numeral "5" in Fig. 10 should be amended to be consistent with the changes made to Fig. 9. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. The disclosure is objected to because of the following informalities: Pages 6 and 7 should be amended to be consistent with the changes made to Figs. 7-10. Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "two ends" set forth in claim 1, "extending from" feature (ln. 9) set forth in claim 1 (and similarly claims 5 and 20), and "hollow body" set forth in claims 5 and 20, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandham and Gardenier et al.

The Sandham reference discloses a bath comprising: water outlet fittings including outlets (inherent), bodies 20 and mounting necks 17; an aperture 13; and a wall/rim 8. Therefore, Sandham teaches all claimed elements except for the shape of the fittings/outlets, the provision of a pump/circulation system, and the provision of a pillow.

Although the outlets of the Sandham bath are not elongate, as claimed, attention is directed to the Gardenier et al.

(Gardenier) reference which discloses an analogous bath which further includes outlets 28 which are elongate (Fig. 4).

Therefore, in consideration of Gardenier, it would have been obvious to one of ordinary skill in the bath art to associate an elongate shape with the Sandham outlets in order to enhance hydrotherapy.

Although the Sandham bath does not include a pump/circulation system, as claimed, attention is again directed to Gardenier which discloses a pump/circulation system (col. 4

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lns. 30-41). Therefore, in further consideration of Gardenier, it would have been obvious to one of ordinary skill in the bath art to associate a pump/circulation system with the Sandham bath in order to enhance hydrotherapy.

Although the Sandham bath does not include a pillow, as claimed, attention is yet again directed to Gardenier which discloses a head rest 130 (Fig. 11). Therefore, in still further consideration of Gardenier, it would have been obvious to one of ordinary skill in the bath art to associate a head rest with the Sandham bath in order to enhance comfort. Moreover, it would have been obvious to construct the head rest of soft material (if not already) in order to further enhance comfort.

7. Claims 1, 4-6, 8 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandham and Gardenier as applied to claims 1, 4, 20 and 21 above, and further in view of Leaverton et al. '625.

Although the wall of the Sandham bath is not curved, as claimed, attention is directed to the Leaverton et al. '625 (Leaverton) reference which discloses an analogous bath which further includes a curved wall 15. Therefore, in consideration of Leaverton, it would have been obvious to one of ordinary

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skill in the bath art to associate a curved shape with the Sandham wall in order to enhance comfort.

8. Applicant's arguments with respect to claims 1, 5 and 20 at pages 7-10 of the response have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

10. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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11. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

/Robert M. Fetsuga/
Robert M. Fetsuga
Primary Examiner
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